

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15223 of 2000

21.4.2007

Between:

Lanka Apparao, S/o.Venkataswamy

... Petitioner

AND

Government of Andhra Pradesh represented by the
Secretary (Tribal Welfare), Secretariat, Hyderabad

And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15223 of 2000

ORDER:

The petitioner herein statedly the owner of land admeasuring Hectares 0.56 in survey No.135/2 situated at Yetipalli village of Gangavaram Mandal in East Godavari District, which is an agency area. On the complaint given by one Dani Nagaraju, fifth respondent herein, the Special Deputy Collector (Tribal Welfare), (the SDC, for brevity), initiated action in LTRP No.69 of 1993. The complaint made at that time was that the petitioner is a non-tribal and the possession of the land is in contravention of Section 3(1)(a) of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (the Regulation, for brevity). After conducting enquiry, the SDC passed orders on 18.6.1994 observing that the petitioner being a member of Ayyarukala caste, the transaction if any is not governed by the Regulation and that necessary action should be taken under Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, as the land was assigned to fifth respondent on 21.1.1988 by way of a D-Form patta. Yet again in 1997, the Special Deputy Tahasildar lodged a complaint with the third respondent who initiated LTRP No.182 of 1997 alleging that the petitioner was in occupation of the land belonging to fifth respondent in contravention of Section 3(1)(a) of the Regulation. A report was called for from the Mandal Revenue Officer, Gangavaram Mandal (MRO, for brevity), who *inter alia* submitted that the petitioner, who migrated from Vizag District, belongs to Ayyarukala community, and that he occupied the land belonging to fifth respondent, who is a tribal. Based on such report, third respondent ordered ejectment of the petitioner. Aggrieved by the same, petitioner preferred CMA No.17 of 1998 before the second respondent, who dismissed the appeal by judgment dated 20.3.1999. In the revision petition, the Government called for report

from the District Collector and dismissed the revision observing that the petitioner failed to adduce any evidence that he belongs to tribal community. In this writ petition, the order of the Government in G.O.Ms.No.33, dated 17.4.2000 is challenged.

Learned Counsel for the petitioner submits that nowhere in the enquiry before the original authority or the appellate authority, the social/ community status of the petitioner that he belongs to a scheduled tribe was questioned and a specific finding was recorded only by the revisional authority which is unsustainable. Learned Government Pleader for Social Welfare submits that Ayyarukala is not a scheduled tribe as per the Constitution (Scheduled Tribes) Order, 1950, and therefore the order of ejectment does not call for interference. He has also taken this Court through the counter affidavit filed by the second respondent.

After perusing the orders passed by the original authority, appellate authority as well as the revisional authority, this Court is convinced that at no point of time a specific allegation was made that the petitioner is not a scheduled tribe. Be it noted that though Section 3(1)(a) of the Regulation absolutely prohibits any transfer of property in Agency Areas whether such transfer is by a person belongs to scheduled tribe or not. An exception is carved out that if the transaction is by a person belonging to scheduled tribe or non-scheduled tribe in favour of scheduled tribe or a society registered under Andhra Pradesh Cooperative Societies Act, 1964, comprised solely with the member of scheduled tribes. Hence in every enquiry under the Regulation an important question to be considered is whether the transferee or the occupant of the land is a scheduled tribe or not. The original authority in this case relied on the report of the MRO who submitted that the petitioner belongs to Ayyarukala and not Yerukala and the petitioner had no opportunity to meet such a case. On this limited ground alone, this Court is of considered opinion that the matter should be considered afresh, as the original authority refers to the report of the MRO to come to the conclusion that the petitioner migrated from Vizag and that he belongs to Ayyarukala community, which is not a scheduled tribe, I deem it proper to remand the matter to the appellate authority, namely, Agent to the Government (District Collector), East Godavari District. The order of the Government in exercise of the revisional jurisdiction also cannot be sustained as no reasons are given in the impugned order.

In the result, the writ petition is allowed. The order of the Government and the order of the Agent to the Government are set aside. The matter is remitted to the second respondent, namely, the District Collector, East Godavari District, Kakinada (Agent to the

Government), with a direction to specifically consider the question whether the petitioner belongs to Yerukala or Ayyarukala community. It shall be open to the petitioner to place all necessary material before the appellate authority, who is further directed to dispose of the appeal within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

(V.V.S.RAO, J)

April 21, 2007.

NOTE:

Dispatch order copy by
28.6.2007.

(By order)

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